

**HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE G. BHAVANI PRASAD**

W.P. No. 7850 of 2004

Between:

R.V. Raghavulu, S/o R. Mallaiah
Petitioner

...

and

1. Registrar (Admn), High Court of Andhra Pradesh,
Hyderabad, and others.

... Respondents

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DATE: 20-04-2006

**HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE G. BHAVANI PRASAD**

W.P. No. 7850 of 2004

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ORDER: (per Hon'ble Sri Justice G. Bhavani Prasad)

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The petitioner, a Steno-typist (Personal Assistant) working in the Unit of the District Judge, Guntur challenges in this writ petition the proceedings of the District Judge dated 18-03-2004 fixing his seniority for counting his service as Personal Assistant (Steno-typist) with effect from 24-01-1986 for record purpose which was confirmed by the High Court on the administrative side in appeal in proceedings dated 06-07-2004.

The petitioner joined as a Copyist in the Court of II Additional District Judge, Guntur on 15-10-1977 and he was promoted as Steno-typist with effect from 24-01-1983. He was declared to have satisfactorily completed his probation by an order dated

29-04-2003 of the District Judge, Guntur. In a surprise inspection by the Additional Subordinate Judge, Narsaraopet in 1990, the petitioner was found to have kept a number of copies of judgments, proceedings and orders and in the disciplinary proceedings initiated against him, the enquiry officer found the charges to be proved. The District Judge, Guntur after service of a show-cause notice imposed punishment of permanent reversion of the petitioner to the post of Copyist in his proceedings dated 01-10-1993 and in appeal the High Court in the proceedings dated 03-02-1994 modified the same as reversion for a period of three years and directed that subsequently if the petitioner is found fit and suitable, the District Judge may consider his claim for promotion. In W.P. No.22046 of 1994 filed by the petitioner against the same, the High Court refused to interfere. The petitioner was promoted again as a Steno-typist by proceedings dated 04-10-1996 and the District Judge, Guntur in the impugned proceedings directed computation of the petitioner's seniority with effect from 24-01-1986 obviously deducting the punishment period of three years, which order was confirmed on the administrative side by the High Court.

The petitioner contends that on expiry of the period of punishment of three years, his position as Steno-typist was automatically restored and there cannot be any re-promotion. Rule 34(4) of the Andhra Pradesh Judicial Ministerial Service

Rules as they stood earlier and Rule 21 (4) of the Andhra Pradesh Judicial Ministerial Service Rules, 2003 are to the effect that where a member of any category is reduced, for a specified period, to a lower category, in case where the reduction does not operate to postpone future increment, the seniority of such member on re-promotion shall, unless the term of the Order of punishment provide otherwise, be fixed in the higher category at what it would have been but for his reduction. The impugned order is contrary to the spirit and purport of the said statutory rules and the Order of punishment did not speak specifically regarding any postponement of increments. Fixing the seniority with effect from 24-01-1986 adversely affects the petitioner's future promotion and amounts to double jeopardy. The petitioner further contended that the District Judge, Guntur in his proceedings dated 24-03-2004 called for special confidential reports and service registers of the employees named therein for considering for promotion as Senior Assistants showing the petitioner at serial No.15 according to inter se seniority. He showed the employees who joined Guntur District Unit on 01-02-1999 at serial Nos.2 and 3 contrary to Rule 37 of the Andhra Pradesh Judicial Ministerial Service Rules, 1964 and Rule 28 (2) of the Andhra Pradesh Judicial Ministerial Service Rules, 2003. Thus, the persons, who have to be treated as juniors to the petitioner, were shown above the petitioner and the District Judge was likely to proceed with the promotions. Hence, the writ petition to fix his seniority with effect from 24-01-1983, the date of his original promotion to the post of Steno-typist.

The District Judge, Guntur, the 2nd respondent, resisted the petition contending that the petitioner was again promoted to the

post of Steno-typist even before the completion of three years period without any claim from him, though the High Court did not grant any relief to the petitioner in W.P. No.22046 of 1994. The High Court on the administrative side only ordered the District Judge to consider the claim of the petitioner for promotion if he is found fit and suitable. The petitioner was called for interview on 01-09-2003 for consideration of his candidature for promotion to the post of Senior Assistant and he attended the interview and submitted an application to change his seniority from serial No.12 to serial No.6. After the remarks of the other candidates who appeared for interview were called for and on due consideration of the material on record, the impugned orders were passed which were confirmed in appeal by the High Court on the administrative side. The petitioner's request to continue him as Steno-typist with retrospective effect from 12-10-1983 quashing his reversion for a period of three years, was negatived by the Division Bench in W.P. No.22046 of 1994 and hence, the petitioner cannot invoke Rule 34 (4) of the Andhra Pradesh Judicial Ministerial Service Rules, 1964 or Rule 21 (4) (a) of the Andhra Pradesh Judicial Ministerial Service Rules, 2003. The persons shown at serial Nos.2 and 3 in the proceedings dated

24-03-2004 were permanent Junior Assistants in their parent Units and were so shown as approved probationers in Guntur District Unit for counting their seniority as shown in the Gradation list of 2000. The petitioner is only a probationer and the seniority is not fixed so far. In the proceedings dated 29-04-2003 declaring the petitioner to have satisfactorily completed the period of probation, it was specifically made clear that the proceedings will not affect the seniority of other employees in common categories which will

be fixed in due course of time. Hence, the District Judge, Guntur sought for dismissal of the writ petition with costs.

The learned counsel for both parties reiterated their respective contentions.

A careful perusal of the material on record clearly indicates the petitioner's disentitlement to the relief claimed.

In his representation to the District Judge, Guntur after attending the interview for consideration for promotion as a Senior Assistant on 01-09-2003, the petitioner raised various objections against the seniority and inclusion of different persons in the list of candidates called for interview. Similarly, in his administrative appeal to the High Court against the impugned orders of the District Judge also, he questioned the same claiming to be considered as the sixth person in the list for promotion. Even in the writ petition, he referred to the disentitlement of two employees to seniority as reckoned by the District Judge. If the request of the petitioner for fixing his seniority with effect from 24-01-1983 were to be positively considered, the same will obviously and indisputably adversely affect a number of other persons who are shown above the petitioner in the list of candidates prepared for consideration for promotion to the next higher post of Senior Assistant. However, none of such persons who are likely to be adversely affected by any order to be passed herein were either given notice of the petitioner's claim or were made parties to this writ petition. Absence of such persons in this writ petition, who will be prejudicially affected by any orders favourable to the petitioner herein, makes the writ petition *ex facie* unjust, inequitable and untenable.

Even otherwise the proceedings of the District Judge,

Guntur dated 29-04-2003 declaring the satisfactory completion of period of probation of certain employees including the petitioner, show that the services of the petitioner as Steno-typist were retrospectively regularized with effect from 25-01-1983 and he was declared to have satisfactorily completed his period of probation by 25-01-1984 retrospectively. It is, thus, clear that the original promotion of the petitioner from the post of Copyist to the post of Steno-typist with effect from 24-01-1983 must have been a temporary promotion and that he must be serving as such temporary Steno-typist by the time of his reversion as Copyist with effect from 12-10-1993. While the declaration of probation of the petitioner with retrospective effect subsequent to his permanent reversion by the District Judge, modification of the same into a reversion for three years by the High Court on the administrative side and the confirmation of the same in W.P. No.22046 of 1994 unfortunately did not take into account the consequences of the punishment in disciplinary proceedings which has become final on such declaration of completion of probation, by the time of his reversion the petitioner was only a temporary Steno-typist whose service as such does not count towards probation but for his retrospective declaration as an approved probationer. Such temporary service will not enure for the benefit of fixation of seniority under Rule 34 of the old Rules or Rule 21 of the new Rules.

Assuming that the retrospective declaration of probation makes such service count for purposes of seniority, the order of permanent reversion by the District Judge or reversion for three years by the High Court made no reference to whether such reduction operates to postpone future increments or not. Such

orders of imposition of penalty of reduction should, in fact, invariably specify whether on the expiry of the period of reduction specified, the Government servant is to be promoted automatically to the post from which he was reduced and whether on such re-promotion, the Government servant will regain his original seniority in the higher post which had been assigned to him prior to the imposition of penalty. The order of the High Court in administrative appeal against permanent reversion was clear that subsequent to the period of three years, the District Judge may consider the petitioner's claim for promotion only if he is found fit and suitable. It is, thus, clear that the order of punishment neither entitled the petitioner to be promoted automatically to the post of Steno-typist again nor made his regaining of original seniority in the post of Steno-typist an automatic consequence. The order of punishment was explicit and clear that the petitioner had to be considered afresh for promotion only if he is found fit and suitable after the expiry of the specified period of reversion. Any such fresh promotion cannot amount to restoration of his original seniority computing him to be in continuous service in that post from the date of his original temporary promotion up to the date of fresh promotion and thereafter including the period of reversion of three years. The effect of the confirmed punishment cannot be nullified and the distinction between a fresh promotion and an automatic re-promotion cannot be erased.

Computation of seniority under Rule 34 (4) of the old Rules or Rule 21 (4) (a) of the new Rules is subject to the terms of the order of punishment and the order of punishment herein clearly specified that subsequent to the period of reversion for three years, the District Judge may consider the petitioner's claim for

promotion only if he is found fit and suitable and though the order made no reference to the postponement or otherwise of future increments, the petitioner cannot lay any claim to fixation of his seniority under Rule 34 (4) of the old Rules or Rule 21 (4) (a) of the new Rules contrary to the specific terms of the order of punishment which only enabled the District Judge to consider fresh promotion and not to give any automatic re-promotion. In fact, the petitioner was given more than his due when he was given a fresh promotion even before the expiry of the punishment period, when he was declared as an approved probationer with retrospective effect from the date of his original promotion ignoring his reversion and fresh promotion in the meanwhile and when in spite of the disruption in his service as Steno-typist for three years due to the punishment, his earlier service was also taken into account for considering his eligibility for further promotion only excluding the period of reversion of three years. While the orders retrospectively declaring the probation of the petitioner themselves specifically left open the question of seniority, the petitioner cannot make any such orders the basis for claiming any seniority. The official memorandum dated 24-03-2004 calling for special confidential reports and service registers to consider for promotion to Senior Assistants is, in fact, not a proceeding fixing any seniority between the candidates in the list. The claim of the petitioner for automatic restoration of his position as Steno-typist on expiry of the punishment period of three years and for computation of the said period of three years also for purposes of fixing his seniority as Steno-typist in spite of his not working as and discharging the duties of Steno-typist during that period,

cannot be sustained on any rule or principle. There is no double jeopardy involved, as deduction of the punishment period of three years is merely consequential to the punishment and not independent of it.

Therefore, either due to non-impleadment of necessary parties or due to absence of any merits in his claim, the petitioner should fail and he should fail with costs as a natural consequence.

In the result, the writ petition is dismissed with costs.

BILAL NAZKI, J

G. BHAVANI PRASAD, J

Date: 20 -04-2007

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